IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO (MVA) No. 446 of 2003 with
FAO (MVA) Nos. 450 & 455 of 2003.
Date of decision: 8.3.2006.

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1. FAO(MVA) No. 446 of 2003.

Jaswant Singh ... Appellant

Versus

Virender Sharma & Ors. … Respondents

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2. FAO(MVA) No. 450 of 2003.

Yashwant Singh ... Appellant

Versus

Virender Sharma & Ors. … Respondents

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3. FAO(MVA) No. 455 of 2003.

Monika ... Appellant

Versus

Virender Sharma & Ors. … Respondents

Coram :

The Hon'ble Mr. Deepak Gupta, Judge.

Whether approved for reporting?[1] Yes.

For the appellant : Mr. Ramakant Sharma with Ms. Anita Dogra, Advocates. (In all the above cases).

For the respondents: Ms. Sunita Sharma, Advocate, for respondent No. 3. (In all the above cases).

Deepak Gupta, J. (Oral):

This judgment shall dispose of all the three appeals as they arise out of the same accident and similar awards.

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[1]Whether reporters of Local Papers may be allowed to see the judgment? Yes.

Brief facts of the cases necessary for the decision of the appeals are that the claimants Jaswant Singh, Yashwant Singh and Monika who are children of Mast Ram were traveling along with their father in a Maruti Van No. HIU-4627. The van was being driven by their father Mast Ram. According to the petitioners, due to mechanical defect, the van met with an accident and they all suffered injuries. It would be pertinent to mention here that the petitioners who were minors filed claim petition under Section 163-A of the Motor Vehicles Act, claiming compensation on account of no fault liability through their father Shri Mast Ram.

To decide the present appeal it would be necessary to refer the provisions of Section 163-A, which read as follows:

> "**163-A. Special provisions as to payment of compensation on structured formula basis.–**
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> (1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle of the authorized insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.
>
> Explanation. – For the purposes of this sub-section, "permanent disability" shall have the same meaning and extent as in the Workmen's Compensation Act, 1923.
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> (2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish

that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule."

A perusal of the aforesaid provision makes it clear that in case a claimant chooses to claim compensation on the basis of no fault liability, the compensation has to be assessed as per the structured formula in the second Schedule and the Motor Accident Claims Tribunal has to award the compensation strictly in accordance with the Schedule and has no jurisdiction to award either a lower amount or a higher amount than provided under the Schedule.

The Apex Court in **U.P. State Road Transport Corporation and others** Vs. **Trilok Chandra and others**, **(1996) 4 Supreme Court Cases 362**, has held that the schedule abounds with mistakes and should not be followed blindly. However, the compensation has to be assessed by following the system laid down in the Schedule.

In all the present appeals, no disability certificates have been proved on record. In fact, there is no evidence to show that the claimants suffered any permanent disability. Therefore, none of the claimants was entitled to any amount as per the table under the Schedule. Clause (4) of the Schedule makes provision for general damages to be awarded in case of injuries. It is provided that for grievous injuries an amount of Rs.5000/- can be awarded as general

damages and in case of non-grievous injuries, Rs.1,000/- can be awarded. As far as medical expenses are concerned, only medical expenses proved by producing bills/vouchers can be awarded, but these cannot exceed a one time payment of Rs.15,000/-. Clause (5) provides for payment of compensation in the case of disability in non fatal accidents and provides that in such cases, the claimant shall be paid actual loss of income for the actual period of disability not exceeding fifty-two weeks. In addition to this amount, in case of permanent total disablement, amount payable shall be arrived at by multiplying the annual loss of income by the multiplier applicable to the age as given in the table. In the case of permanent partial disablement, such percentage of compensation as would be payable in the case of permanent total disablement is to be awarded. The schedule also provides that the injuries deemed to result in permanent total disablement and permanent partial disablement and percentage of loss of earning capacity shall be as per the Schedule-1 under the Workmen Compensation Act. It is clear that the table under Clause (1) of the Schedule has to be applied in case of permanent disablement or permanent partial disablement. Obviously, there has to be a disability certificate and medical evidence to prove the percentage of the disability, so that the Tribunal can assess the loss of earning capacity as per the table under the schedule. In the present appeals there is no disability certificate and obviously nothing could have been awarded for loss of income.

While awarding compensation under Section 163-A, the Tribunal has no jurisdiction to award compensation for pain and suffering loss of amenities, future discomfort and other such heads except to the extent of Rs.5,000/- in the case of grievous injuries and Rs.1000/- in the

case of non-grievous injuries as mentioned here-in-above. It is for the claimant to choose whether he wants to claim compensation under Section 163-A or under Section 166. Once this choice is made, the claimant has to be awarded compensation strictly in accordance with the Schedule. As already observed above, the Tribunal has no jurisdiction to award an amount higher or lower than the amount payable under the Schedule.

In case of Jaswant Singh, there is no proof of disability. The claimant did remain in hospital for about 13 days and the Tribunal apparently following the principles of Section 166 has awarded Rs.2000/- for medical treatment without proof of any bills or vouchers as required under the Schedule. Rs.5,000/- has been awarded for physical agony, suffering and mental stress, though there is no proof that the claimant suffered grievous injuries. There is nothing on the record to show that the claimant suffered grievous injuries. The award is not at all in consonance with Section 163-A of the Motor Vehicles Act. However since the Insurance Company has not challenged the same, it is not interfered with.

In the case of Yashwant Singh and Monika, the Tribunal has not awarded any amount whatsoever on the ground that there is nothing to show that the claimants have suffered any injury whatsoever. This finding of the Tribunal is against the record. The cases under Section 163-A of the Act can be decided on the basis of the oral or documentary evidence by means of affidavits. In both these cases there are documents on the file that the claimants Yashwant Singh and Monika remained in hospital for one day and were diagnosed as having suffered multiple injuries in the case of Yashwant Singh and polytrauma in the case of

Monika. Therefore, some injuries have been suffered by them. These injuries are not grievous injuries. Therefore, the claimants are entitled to Rs.1000/- each as general damages. The claimants have failed to prove any loss of income, loss of disability or medical expenses as required under the second Schedule. Therefore, they are only awarded Rs.1000/- each.

In view of the above, FAO No. 446 of 2003 is dismissed and FAO Nos. 450 and 455 of 2003 are partly allowed and the claimants are held entitled to compensation of Rs.1000/- in each case. They are also held entitled to interest at the rate of 9% per annum from the date of filing of the claim petition i.e. 14.12.2001 till the date of deposit of the amount. Since the vehicle involved in the accident was admittedly insured with the Insurance Company, it is directed to deposit the enhanced amount in the Registry of this Court within eight weeks from today. All the appeals are disposed of accordingly with no order as to costs.

(Deepak Gupta),
Judge

March 8, 2005
(BSS)